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JAMES MARC LEAS
37 Butler Drive
S. Burlington, VT 05403

MAR 30 2007

In re Application of:
David L. Churchill et al.
Serial No.: 10/677,578
Filed: October 2, 2003
Attorney Docket No.: 115-007

DECISION ON PETITION
TO RESTART STATUTORY PERIOD FOR
REPLY

This is a decision on the petition under 37 CFR 1.181, filed October 10, 2006, to reset the shortened statutory period for reply to run from September 28, 2006, the date a copy of the non-final Office action of April 10, 2006, was obtained from the USPTO web site.

The petition is **DISMISSED**.

A non-final Office action was mailed on April 10, 2006, setting a three-month shortened statutory period for reply. A reply was filed along with the instant petition on October 10, 2006. A Notice of Abandonment has not been mailed.

Petitioner asserts that the Office action of April 10, 2006 was not received and a copy of the Office action was downloaded from the USPTO web site on September 28, 2006. To support the petition, petitioner states that "[a] search of the file jacket and the docket records indicates that the office communication was not received" and provides a "copy of the file jacket where the nonreceived office communication would have been entered had it been received and docketed." Petitioner states that he is a sole practitioner with no employee and has not maintained and does not maintain a docket record notebook listing all the mail received and the date of its receipt. Petitioner also asserts that he "personally review each item of received mail, records all received mail on the respective file jacket at the time it is received, faxes a copy of all received mail to applicant, Microstrain, Inc., enters the matter into a computerized calendar system, and enters the start and stop times into an Excel file for billing Microstrain, Inc. for the time spent reviewing and faxing the office action. A review of the computerize calendar system shows no entry. And a review of the Excel file shows no entry and that Microstrain was not billed for time for this. Thus the mail from the PTO was not received by applicant's attorney."

A review of the file record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing

that the Office action was not in fact received at the correspondence address of record at the time the Office action was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

Pursuant to M.P.E.P. § 711.03(c), it is petitioner's burden to demonstrate that the Office action was not in fact received at the correspondence address of record at the time it was mailed. The evidence of record is not sufficient to establish non-receipt of the Office action. Since petitioner does not maintain a docket record listing all mail received and its receipt date, other evidence is necessary to establish that petitioner did in fact not receive the Office action. The petition lacks corroboration to establish that a copy of the Office action was not received by Microstrain, Inc. A statement from a person from Microstrain is necessary to establish that a copy of the Office action was not received at that office. The statement should explain in sufficient details how papers relating to patent applications are recorded when received from petitioner and attest that a review and search of appropriate records at Microstrain, Inc. indicates that a copy of the Office action was not received from petitioner.

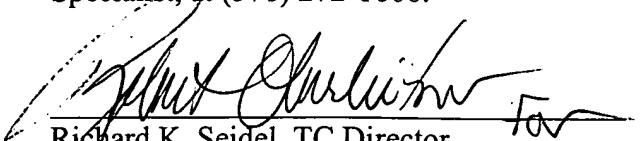
Since petitioner has not made the requisite showing required under M.P.E.P. § 711.03(c), the request to restart the shortened statutory period for reply is dismissed. In view of this dismissal of the petition, the amendment filed October 10, 2006 cannot be accepted.

Absent further evidence to establish that the Office action was in fact not received, the application became abandoned by operation of law at the expiration of the three-month shortened statutory period set in the Office action of April 10, 2006.

Any request for reconsideration of this decision must be submitted within two months of the date of this decision to be considered timely. Extensions of this time are available under 37 CFR 1.136(a).

Alternatively, petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137(a) or (b) to revive the application.

Inquiries regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.



Richard K. Seidel, TC Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components